

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

WEYERHAEUSER COMPANY

Employer

and

Case 36-RC-6413

ASSOCIATION OF WESTERN PULP
AND PAPER WORKERS (AWPPW)

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.¹

I. SUMMARY

Weyerhaeuser Company ("the Employer"), is a Washington corporation engaged in the manufacture of corrugated boxes at its facility in Salem, Oregon, the only facility at issue herein. The Salem location is part of the Employer's container board packaging business.

The Association of Western Pulp and Paper Workers ("the Petitioner") filed the instant petition seeking to represent a unit of all full-time and regular part-time production, warehouse, shipping, and lab employees employed by the Employer at its Salem, Oregon facility; excluding all other employees, maintenance employees, office clerical employees, custodial employees, guards and supervisors as defined by the Act. The Employer contends that the petitioned-for-unit is inappropriate, as it excludes maintenance employees. Nonetheless, the parties stipulated at the hearing that any unit found appropriate by the Regional Director should at the very least include production employees, lab employees, shipping employees and shipping lead and should exclude customer service, quality control, engineering, finance,

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

planner/purchaser, office clerical, and guards and supervisors. Therefore, the only issue before me regarding unit composition is whether maintenance employees should properly be included in the petitioned-for-unit. The Petitioner has indicated a willingness to go to election in the Unit found appropriate in this Decision.

The second issue to consider in this case is whether the impending sale of the Employer's container board packaging business, which includes the Salem facility, would make a representation election futile, considering that the Employer would have only a short time to bargain with the Petitioner before consummation of the sale.

I have carefully reviewed and considered the record evidence, and the arguments of the parties at both the hearing and in their post-hearing briefs. I find that, based on the evidence and the Board's well-established community of interest analysis, the petitioned-for-unit is an appropriate one. With regard to the sale of the facility issue, I find that the Employer has produced insufficient evidence of the impending sale to warrant dismissal of the instant petition. Accordingly, I am directing an election in the petitioned-for-unit.

Below, I have provided a section setting forth the evidence as revealed by the record in this matter and relating to background information about the Employer's operations; relevant community of interest factors, and the pending sale of the Salem facility. Following the evidence section is my analysis of the legal principles the Board utilizes in determining the appropriateness of a petitioned-for-unit and in addressing the Employer's purported sale of the Salem facility. I have also set forth below details of the directed election, and the procedures for requesting review of this decision.

II. RECORD EVIDENCE²

A. The Employer's Operations

The Employer is engaged in the manufacture of paper and paper products. The Employer's facility at issue, located in Salem, Oregon, is part of the Employer's container board packaging business, which totals about 80 or 90 of these facilities. The Salem facility is about 110,000 square feet. Most of the building is dedicated to production, with offices along the front of the building, along with a conference room and a lunchroom. The production area contains equipment used in manufacturing, including a winder, a corrugator, a saw, an enclosure, a strapper/wrapper, and an Armacel machine. The maintenance department is an open and exposed area (except for a surrounding chain link fence) located in the back of the production area, along the back wall of the building. The maintenance area contains equipment such as a drill press, a welder, grinders, saws, an electric band saw, a press, and multiple hand tools.

Bob Pettina is the site manager and the highest authority at the Salem facility. The facility employs 29 employees: 11 salaried employees and 18 hourly employees.

² The Employer presented the testimony of Bob Pettina, site manager of the Salem facility. The Petitioner presented the testimony of maintenance employees Jim Frame and Jay Phillips, production employee Wayne Anderson, Petitioner's organizer Paul Cloer, and Petitioner's area representative Kenneth Smith.

Production, maintenance, shipping (including a shipping lead), and quality lab technician employees are hourly paid employees.³ Tom Kloft is the production supervisor in charge of twelve production employees. Kloft is also in charge of three shipping employees, which include a shipping lead and two shipping clerks. Tim Cranston is the maintenance supervisor in charge of the two maintenance employees at issue: Jim Frame and Jay Phillips.⁴ Jim Frame is a Journey Level Mechanic-Four Years, and Jay Phillips is a Journey Mechanic/Licensed Electrician. Clay Underwood is the quality manager in charge of a quality lab technician employee.

B. Relevant Community of Interest Factors

1. Wages, Hours, and other Working Conditions

Most production employees work 10-hour shifts four times per week, Monday through Thursday from 5:30 a.m. to 4:00 p.m. Quality lab, maintenance, and some production employees work 8-hour shifts five times per week, Monday through Friday from 5:30 a.m. to 2:00 p.m, although the maintenance department modifies its schedule to have Jim Frame start at 7:30 a.m. Shipping employees also work five 8-hour shifts per week, but their schedule is also modified to have an employee start at 6:00 a.m. and another one at 7:00 a.m. All hourly employees keep track of their time punching in and out on a time clock.

Jim Frame makes \$21.78 per hour, while Jay Phillips makes \$25.44 per hour. Production employees make anywhere from \$12.00 for new hires up to \$18.76. The quality lab technician also makes \$18.76. The shipping lead makes \$19.64, while the shipping clerks make \$17.55. According to Bob Pettina, maintenance employees make more than the rest of hourly employees because they possess a greater skill set and more responsibility.

All employees, salaried and hourly, are covered by the same pension plan (the Weyerhaeuser pension plan) as well as the same health and welfare insurance plan. In addition, all hourly employees are subject to the same employee manual's terms and conditions.

Maintenance employees wear coveralls to protect against grease but they do not wear any special outfits or equipment different from that of production employees, except that Phillips wears an outfit that specifically protects him during electrical repairs. All production and maintenance employees wear radios, which are used by production employees to alert maintenance of any equipment problems.

³ The petitioned-for-unit covers 16 employees: all hourly employees with the exception of the 2 maintenance ones.

⁴ The parties stipulated at the hearing that both Tom Kloft and Tim Cranston were statutory supervisors because they possess or exercise one or more of the supervisory indicia laid out in Section 2(11) of the Act. In light of this stipulation and the record evidence, I shall exclude both Kloft and Cranston from the bargaining unit found appropriate herein.

2. Commonality of Supervision

Frame and Phillips report to Tim Cranston, the maintenance supervisor. Whenever Cranston is absent, Frame and Phillips report to Tom Kloft, the production supervisor. During Cranston's absences, Kloft has the authority to direct and discipline Phillips and Frame. However, Frame testified that although Cranston has a lot of vacation time, he is at the facility "all the time."

All shipping and production employees report to Tom Kloft. The record is silent as to who supervises shipping and production employees in Kloft's absence.

3. Degree of Skill and Common Functions

Jim Frame started working for the Employer in April 2000, when the facility at issue opened. He started working as a line operator (a production position) prior to moving into maintenance. Frame testified that he acquired maintenance and repair skills before being hired by the Employer, from previous jobs and from his time in the military service. Frame said that sometime in 2005 or 2006, the maintenance supervisor offered Frame a maintenance position because he had always volunteered to help with varied maintenance tasks and the supervisor liked Frame's skills. Frame did not know whether this offer was extended to other production employees. Frame did not have to take a test or exam to qualify for the maintenance position; however, he was told that he would have to take mechanical classes in order to improve his mechanical skills and keep the position. Frame took such classes, and in October 2007 he was indentured into a four-year mechanical apprentice program at Lynn-Benton Community College. The Employer assists Frame with the cost of tuition and books. Frame currently works primarily in the mechanical aspects of production equipment.

Jay Phillips has been a Weyerhaeuser employee for about 20 years, although he has been working at the Salem facility for only about 10 months. Like Frame, Phillips started working for the Employer initially as a production employee. In order to qualify for the maintenance position at the Salem facility, Phillips interviewed with local management and had to demonstrate a background in maintenance, a journeyman electrical license, and experience troubleshooting the computer program running the production machines. Phillips said that he acquired his mechanical maintenance skills through a 2-year Weyerhaeuser apprentice program at Lynn-Benton Community College, before apparently crossing over to the electrical apprentice program. Phillips, as well as maintenance supervisor Tim Cranston, is a licensed electrician. They both work in the electrical aspects of the production equipment in addition to the mechanical aspects.

Bob Pettina noted that the apprentice program at the Salem facility is designed to allow maintenance employees to improve their mechanical skills. The record is unclear on whether this is a mandatory program for maintenance employees. Pettina said that the Employer does not have an apprentice program to allow production employees to transition into maintenance. Pettina also asserted that an employee working production

or shipping would not ordinarily acquire maintenance skills by simply working in the production or shipping part of the facility.

The record is silent as to the skills needed by production or shipping employees to perform their respective functions.⁵

4. Frequency of Contact and Interchange with other Employees

Frame also testified that sporadically (he described it as “several days over a 2-month period”) he is asked by management to help with production, since he has a production background and knows how to operate the equipment. Frame said that sometimes he is asked to work production duties all day, and sometimes only for a portion of his day, apparently during the 2-month period he referred to in his testimony. However, he noted that regardless he is always paid his maintenance position hourly wage.

Phillips on the other hand testified that on any given day, he spends from half an hour to an hour helping out production employees with random production tasks. Phillips said that he does not necessarily follow management’s directions in these random tasks, but instead he simply helps in production whenever he sees that someone needs help. Phillips said that he has neither been disciplined nor told that he cannot help with production work.

Pettina testified that due to the small size of the Salem facility, all employees usually pitch in to accomplish whatever jobs need to be done, and that this means sometimes even supervisors have to run production machines. Wayne Anderson, a production employee, testified that Frame was a good helper to production employees, but Anderson said that he had never seen Phillips helping out in production. Anderson noted, however, that from his position on the production floor he could not see every part of the production operation.

The record shows no evidence of production employees temporarily being assigned to perform maintenance work.

5. Functional Integration

As maintenance employees, Frame and Philips interact with production employees to make repairs and adjustments to the production equipment as necessary. This occurs on a daily basis and throughout the entire work day. In addition, Pettina testified that at least a couple of times per week, Frame and Philips are helped in their maintenance duties by production employees.

Frame testified that he interacts with production employees dozens of times per day, and that on an average day he spends 6 hours on the production floor, and 2 hours

⁵ Frame and Phillips also perform some additional specific tasks such as testing water samples from the boiler and checking the heater and air conditioning units.

in the maintenance area. Some of the work that maintenance employees perform in their own specific area includes table work such as making brackets, cutting, and welding. Frame testified that he typically starts his work day by walking around the production area for about 45 minutes checking on production equipment and talking to production employees regarding any equipment issues. After that, Frame spends most of his day fulfilling PM (preventive maintenance of production equipment) orders, which are regularly assigned by maintenance supervisor Tim Cranston, or responding to calls/orders generated by production operators whenever they notice mechanical issues with their machines. Frame said that during his maintenance duties, it is always helpful to have the production employee assigned to the machine at issue help him with the repairs, but he added that some production employees help while some others just walk away.

Frame said that a couple of times per month, production employees are also scheduled to do preventive maintenance on their assigned machines, such as replacing parts. Wayne Anderson testified that occasionally some mechanically inclined production employees voluntarily performed simple maintenance tasks on their machines without the assistance of maintenance employees. Anderson further testified that each production employee has a set of tools issued to work on their machines, and they also freely enter the maintenance area to borrow tools or materials. However, Anderson noted that production employees could not perform any maintenance on production machines other than their own, and that complex maintenance tasks or tasks that require certifications were strictly reserved to maintenance employees.

Phillips described his average working day in similar terms as Frame, agreeing with Frame's estimate that on an average day he spends 6 hours on the production floor and 2 hours in the maintenance area. Phillips testified that he relied on production employees a lot more than Frame to find out what is wrong with the machines, because Phillips is fairly new at the facility and still learning about the machines. Phillips also testified that during actual repairs, he sometimes asks production employees to help him if he needs an additional set of hands, especially during the first 2 hours of his shift, before Frame starts his work day. Phillips specified that production employees aren't allowed to do electrical work and that he spends from 20 to 30 percent of his time performing electrical repairs and maintenance, and the rest performing mechanical maintenance.

6. Bargaining History

The parties stipulated at the hearing that there is no history of collective bargaining at the Employer's Salem, Oregon facility.

7. Extent of Organizing

Paul Cloer, an organizer for the Petitioner, testified that he did not include maintenance employees in the petitioned-for-unit because the entire maintenance department did not want anything to do with the Petitioner and he wanted to respect their wishes.

C. Sale of the Facility

Bob Pettina testified that according to his belief all facilities in Weyerhaeuser's container board packaging business, including the facility at issue in Salem, Oregon, have been sold to International Paper, and that the sale, already approved by federal authorities, is expected to be finalized by August 4, 2008. However, Pettina also added that he was not personally involved in the sale of the facility, and that all he knows about the sale is what he has been told. Pettina did not review or have access to any sale documents to confirm the August 4 sale date, and he denied having any knowledge of the future of the facility after the sale is finalized. Pettina could not tell whether the facility would be closed, moved, downsized, or expanded after the sale. The Employer provided no documents relating to the sale.

III. LEGAL ANALYSIS

A. Appropriate Unit - Community of Interest Factors

Section 9(b) of the Act does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). Thus, there is ordinarily more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for-unit. The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988); *Bartlett Collins Co.*, 334 NLRB 484 (2001). In determining whether a petitioned-for-unit is appropriate, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees, and functional integration. *Brand Precision Svcs.*, 313 NLRB 657 (1994); *The Boeing Company*, 337 NLRB 152 (2001). The Board generally looks to the totality of the circumstances or the overall community of interest in making unit determinations. *Johnson Controls, Inc.*, 322 NLRB 669 (1996).

The Employer correctly cites *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962) for the principle that a “plant wide unit [of production and maintenance employees] is presumptively appropriate under the Act.” However, that presumption is not applicable here where Petitioner does not seek a unit of production and maintenance employees. Rather, Petitioner is seeking a unit of production and to exclude maintenance employees. While not presumptively appropriate, the Board, as noted below, has held a unit of production employees that excludes maintenance employees, to be an appropriate unit. In sum, unit presumptions apply only where the presumptively appropriate unit is that which is petitioned-for; if a petitioner seeks a different unit, the presumptions have no application in situations such as that before me. *Capital Coors Co.*, 309 NLRB 322 (1992).

In *Lawson Mardon U.S.A., Inc.*, 332 NLRB 1282 (2000), the Board found a petitioned-for-unit of production employees which excluded maintenance employees appropriate. *Lawson Mardon* noted that although maintenance employees were required to hold licenses, they were still expected to possess job related experience. The decision also emphasized the lack of a history of collective bargaining at the plant; the limited nature of the assistance provided by production employees during repairs and maintenance tasks; the limited number of transfers from production to maintenance (noting that transfers from production to maintenance had wages lower than those of maintenance employees hired from the outside); and the separate supervision of maintenance employees (occasional supervision by production supervisors was limited to simple directions). *Id.*

Similarly, in *Capri Sun, Inc.*, 330 NLRB 1124 (2000), the Board found that maintenance employees had a sufficiently separate community of interest from production employees because maintenance performed skilled functions, such as electrical repair, that production employees did not perform, and they received higher wages based on those skills. *Capri Sun* also noted that the overlap of lesser skilled duties did not negate the separate community of interests of maintenance employees. *Id.* at 1126.

Here, the record reveals interaction of production and maintenance employees during repairs and maintenance duties but the Board has held that the level of interaction alone does not mandate a combined production and maintenance unit. *Id.* See also *Yuenglin Brewing Company of Tampa, Inc.*, 333 NLRB 892 (2001). Indeed, in cases where there is substantial interaction between production and maintenance employees during repairs and maintenance, the Board has found that maintenance employees had a separate community of interest by explaining that given the facts, such assistance reflected a “spirit of cooperation or civility rather than an overlap of job functions.” *Ore-Ida Foods, Inc.*, 313 NLRB 1016 (1994), quoting *Omni International Hotel*, 283 NLRB 475 (1987).

In light of these guiding decisions by the Board and the record evidence before in this case, I find that the evidence is insufficient to compel the inclusion of the maintenance employees in the petitioned-for-unit. Rather, an analysis of the community of interest factors supports my finding in this regard.

As for wages, the record reveals that the maintenance employees receive significantly higher wages as a result of their greater skill set. Indeed, Phillips earns almost \$6 more per hour than the next highest paid unit employee and over \$13 more than the lowest paid unit employee. Similarly, Frame earns over \$2 more than the highest paid unit employee and nearly \$10 more than the lowest paid unit employee. While any differences in the maintenance employees' hours and working conditions is arguably limited relative to unit employees,⁶ the wage differences are relatively significant and a factor I find in support of the petitioned-for-unit.

Regarding supervision, the record discloses that the maintenance employees are separately supervised. While I acknowledge that maintenance employees are supervised by the production supervisor whenever the maintenance supervisor is absent, I also note that Frame testified that the maintenance supervisor was at the facility "all the time," which leads me to the conclusion that maintenance employees are supervised by the production supervisor only on rare occasions. Thus, the factor of separate supervision weighs in favor the petitioned-for-unit.

Turning to the factors of degree of skills and common functions, the record reveals that the maintenance employees were hired from out of the Employer's production operations, but based on their mechanical and/or electrician skills which they had obtained from sources other than those provided by the Employer. Specifically, Frame had obtained maintenance skills while working for other employers and from the military. Moreover, the Employer required Frame to take mechanical classes in order to keep his new job in maintenance and pursuant to that requirement he is currently enrolled in a 4 year mechanical program at a local college. Similarly, Phillips was hired out of the Employer's production operations based on skills that he obtained elsewhere, a demonstration of those skills for the Employer, and his electrician's license. Some of these skills were obtained in a 2-year program at the same local college currently attended by Frame. The record further reveals that maintenance employees not only possess different skills, but those different skills are also critical to the performance of their functions in the maintenance shop and on the production floor. In those functions, the maintenance employees perform work that is not performed by production employees, especially with regard to electrical and complex mechanical work, and they utilize tools and equipment that are not utilized by unit employees. In view of the above and the record as a whole, I find that the factors of degree of skills and common functions weigh in favor of excluding maintenance employees from the unit sought by Petitioner.

As for the factors of contact and interchange with other employees, the record reveals that maintenance employees do have contact with unit employees on a daily basis. However, the contact does not appear to be critical to the performance of the maintenance employees' work. Indeed, Frame testified that while some production employees will assist him with maintenance work, others walk away from their machines and provide no help. The record also revealed a limited number of permanent transfers

⁶ I note that maintenance employees spend significant portions of their work time in the maintenance area, removed from the production floor. Further, I note maintenance employees' different hours/schedules from most employees in production and their different clothing when performing electrical-maintenance work.

from production to maintenance positions, a situation similar to that in the *Lawson Mardon* case noted above. Indeed, here the Employer acknowledged that it did not have an apprentice program to assist production employees' transition into the maintenance side. While concededly Frame was able to transition from production to maintenance, it is also clear that his transition was not the result of any Employer program or material assistance, but instead was the result of his showing of mechanical skills (which were acquired elsewhere) to the maintenance supervisor over the course of his employment as a production operator. Also similar to one of the considerations in *Lawson Mardon*, despite having transitioned from production to maintenance about 2 or 3 years ago, Frame still has an hourly wage lower than that of Phillips, who is a relatively recent outside hire but who also has an electrical license.

Further, I note that the Board distinguishes between two types of interchange -- temporary transfers and permanent transfers -- and "regard[s] permanent transfers to be a less significant indication of actual interchange than temporary transfers." *Frontier Telephone of Rochester, Inc.*, 344 NLRB No. 153 (2005) quoting *Novato Disposal Services*, 330 NLRB 632 fn. 3 (2000). While the record is unclear as to the exact number of hours Frame and Phillips spend performing production duties on a temporary basis, neither Frame ("several days over a two-month period") nor Phillips (half an hour to an hour each day) appear to be spending a substantial amount of their time in production positions so as to warrant a finding of dual function status, which status was not addressed by the parties but will be further discussed below.

Regarding functional integration, the record reveals that significant maintenance work is performed in the maintenance shop away from the production floor and that production employees' assistance is not critical to the performance of maintenance work. Indeed, the record shows that the assistance provided by production employees during repairs is mainly voluntary, depending on the willingness of the production employee, and limited in nature to simple tasks. Thus, I find that the assistance provided by production employees is along the lines of the "spirit of cooperation and civility" described in *Ore-Ida Foods* and not based on a functional integration of production and maintenance positions. While I acknowledge that the record shows that Frame and Phillips occasionally help with production tasks, I do not find that such sporadic occurrences would compel their inclusion in the unit sought by Petitioner.

On the factor of extent of organizing, I acknowledge that the Petitioner indicated on the record that its petitioned-for-unit may have been influenced by the extent of its organizing. The Employer cited cases in which the Board found a petitioned-for-unit inappropriate when extent of organizing was the only consideration, *John A. Sundwall & Co.*, 149 NLRB 1022 (1964), or the primary consideration, *Quality Food Markets, Inc.*, 126 NLRB 349 (1960). Nonetheless, I note that extent of organizing may be taken into consideration as one of the factors in unit determination, together with other factors, provided of course, that it is not the governing factor. *Metropolitan Life Insurance Co. v. NLRB*, 380 U.S. 438 (1965). See also *Stern's Paramus*, 150 NLRB 799, 807 (1965). In this case, I find that in light of the other described factors, the petitioned-for-unit is an appropriate one, regardless of whether extent of organization was a factor involved in the Petitioner's choice. Nonetheless, the extent of organization in this case does provide additional support for the petitioned-for-unit.

In sum, an overall analysis of the community of interest factors present in this case supports finding that the unit sought by Petitioner is appropriate. This finding is further supported by the lack of bargaining history in a larger unit.

I note that in its post-hearing brief, the Employer argued, relying on *Huckleberry Youth Programs*, 326 NLRB 1272 (1998) and *Airco, Inc.*, 273 NLRB 348 (1984), that excluding maintenance employees would create a residual unit. While I acknowledge that in both of those cases the Board stated its preference to avoid residual units whenever possible. However, in both those cases, the Board only weighed the potential for a residual unit as one of the factors in its unit determination, which was based mainly on a community of interest analysis. Here, I do not find that the potential for a residual unit outweighs the factors enumerated above in my community of interest analysis. I also note that the Board has found that a unit which does not contain all of the unrepresented employees is not a true residual unit. *Armstrong Rubber Co.*, 144 NLRB 1115 fn. 11 (1963). Here, the parties stipulated at the hearing to exclude from the unit other job classifications such as office clericals and customer service. Thus, there is insufficient evidence to support the Employer's argument that the maintenance employees would truly constitute a residual unit.

As noted above, the time spent by Frame and Phillips performing production work, in addition to their maintenance work, raises the issue of their "dual function" status. Neither party raised the issue at the hearing or in their respective briefs. Dual function employees, as the term indicates, are employees who, as here, perform functions belonging to two or more separate job classifications or positions. The "unit placement of dual-function employees is determined by a variant of the Board's traditional community-of-interest test." *Columbia College*, 346 NLRB No. 69 (2006), slip op. at 4 (2006), citing *Berea Publishing Co.*, 140 NLRB 516, 519 (1963). The Board will include dual-function employees in the unit if the employees regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in the working conditions of the unit. *Id.*; *Harold J. Beckler Co.*, 343 NLRB 51, 52 (2004). In making this determination, the Board does not apply a bright line rule regarding the amount of time that an employee must spend performing unit work, but considers the facts of each case. *Bredero Shaw*, 345 NLRB No. 48, slip op. at 6 (2005). Nonetheless, the Board "generally finds that dual-function employees should be included in a bargaining unit if they spend 25 percent or more of their time performing unit work. *WLVI Inc.*, 349 NLRB No. 63, slip op. at 5 fn. 5 (2007). Here, the record is unclear as to the exact number of hours Frame and Phillips spend performing production duties. However, I find that neither Frame ("several days over a two-month period") nor Phillips (half an hour to an hour each day) spends 25 percent or more of their working time performing production unit work. Accordingly, I find there is insufficient evidence to establish dual function status for the maintenance employees, as defined by Board law. Therefore, the maintenance employees are not eligible to vote in the directed election as a result of their limited production work.

In sum, I find that the petitioned-for-unit is an appropriate one, and that the limited interchange and interaction between production and maintenance are not enough to outweigh factors militating against inclusion, such as the wage differential,

different skills and functions, separate supervision, lack of a history of collective bargaining, and extent of organizing.⁷ Thus, the Employer has failed to meet its burden of establishing that the petitioned-for-unit is inappropriate.

B. Sale of the Facility

This case presents the issue of a putative, impending sale, scheduled for finalization on August 4, 2008. The Employer argues this impending sale constitutes grounds for dismissing the petition as there would be insufficient time for meaningful bargaining before a change of ownership. The Employer did not provide any case law to support its argument and I find such argument unpersuasive for two separate reasons.

First, the Employer failed to meet its burden to show that the August date constitutes anything more than a target date and, as such, it cannot be said with certainty that the Employer or purchaser firmly agreed to or anticipate a change of ownership on that date. Based on the presented evidence, I find the testimony about the August date constitutes little more than unreliable evidence from the Employer's sole witness at the hearing who admitted he lacked personal knowledge not only of the sale agreement but also of any other details relating to the Employer's arrangements or dealings with the expected purchaser.

Second, the sale alone is not grounds for dismissing the petition because there is insufficient evidence to establish the unit will cease to exist or become inappropriate as of any future sale date. Thus, this case is unlike a typical "cessation of operations" case where the Board will dismiss a petition when termination of unit operations and liquidation of the facility are imminent. Such imminence can be evidenced by a public release announcing closure, cessation of production order taking, termination of contracts with suppliers, and a large decrease in the unit work force (see *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974)), by a corporate resolution to liquidate and sell the corporate assets within 90 days (see *Larson Plywood Company, Inc.*, 223 NLRB 1161 (1976)), or by a notice to employees that operations would be subcontracted and they would be permanently laid off (see *Hughes Aircraft Company*, 308 NLRB 82 (1992)). Here, the Employer has provided no documentary evidence or reliable testimony showing that steps have been taken towards the liquidation or closure of the facility and that such outcome and/or sale is imminent and inevitable.

In light of the above, I am refusing to dismiss the petition on the grounds that the impending sale would give insufficient time for meaningful bargaining.

IV. CONCLUSION

I find that the Employer has failed to meet its burden of establishing that the petitioned-for-unit is not an appropriate unit, as the record evidence is insufficient to compel inclusion of the maintenance employees in the unit sought by Petitioner. The record also revealed insufficient evidence to establish that the maintenance employees are dual function employees as defined by Board law. Further, I find that it would be

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I emphasize that the factor of extent of organizing was not the determinant factor in my decision.

inappropriate to dismiss the petition based on the grounds that the impending sale of the facility would give insufficient time for meaningful bargaining.

Accordingly, I shall exclude maintenance employees from the petitioned-for-unit and direct an election in the following appropriate unit (hereinafter "Unit"):

All regular full-time and part-time production employees, lab employees, shipping employees and shipping lead employed by the Employer at its Salem, Oregon facility; excluding all maintenance employees, customer service, quality control manager, engineering, finance, planner/purchaser, office clerical, and guards and supervisors as defined in the Act.⁸

There are approximately sixteen (16) employees in the Unit.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by ASSOCIATION OF WESTERN PULP AND PAPER WORKERS (AWPPW).

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to

⁸ With respect to the Unit description, the parties stipulated at the hearing to include the lab employees and to exclude quality control. However, it also appears undisputed that the Employer's quality control department consists of only the quality control manager and one lab employee/technician. Therefore, I have set forth the Unit description based on the parties' apparent desire to include quality control employees but to exclude the quality control manager.

communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994).

In order to be timely filed, such list must be received in SubRegion 36 of the National Labor Relations Board, 601 SW Second Avenue, Suite 1910, Portland, Oregon, 97204,-3170 on or before **June 11, 2008**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 18, 2008**. The request may be filed through E-Gov on the Board's web site, www.nlr.gov, but may not be filed by facsimile.⁹

⁹ To file a request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.

DATED at Seattle, Washington, this June 4, 2008.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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915 Second Avenue
Seattle, Washington 98174